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FEDERAL COMMUNICATIONS COMMISSION

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In Re Applications of:)	WT DOCKET No.:	96-41	FEDERAL COMMUNICATIONS COMMISSION OFFICE OF SECRETARY
LIBERTY CABLE CO., INC.	)	File Nos.:		
	)	708777		WNTT370
For Private Operational	)	708778, 713296		WNTM210
Fixed Microwave Service	)	708779		WNTM385
Authorization and	)	708780		WNTT555
Modifications	)	708781, 709426,		WNTM212
	)	711937		
New York, New York	)	709332		(NEW)
)	712203		WNTW782
)	712218		WNTY584
)	712219		WNTY605
)	713295		WNTX889
)	713300		(NEW)
)	717325		(NEW)

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Date: December 12, 1996

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Suite 201
FCC Building
2000 L Street, N.W.
Washington, D.C.

Thursday,
December 12, 1996

The parties met, pursuant to the notice of the
Judge, at 9:36 a.m.

BEFORE: HON. Richard L. Sippel
Administrative Law Judge

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I N D E X

EXHIBITS:

PAGE:

None.

Hearing Began: 9:36 a.m.

Hearing Ended: 10:26 a.m.

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1 P R O C E E D I N G S

2 JUDGE SIPPEL: Good morning.

3 ALL: Good morning, Your Honor.

4 JUDGE SIPPEL: Let us go on the record.

5 Okay, I received all of the reports -- status
6 reports, scheduling reports, suggestions and all -- and I
7 have noticed -- well, first, let me ask, are there any
8 updates from what I received yesterday?

9 Okay, hearing nothing, I have got what the current
10 positions are for the parties. Now, I am assuming that both
11 sides have discussed what the procedures are -- I mean, as
12 far as what could or could not be agreed to on procedures.
13 I am going to make references, on one side to Time Warner
14 and the other side to Liberty. But that includes, obviously
15 -- when I am talking that way, I mean Liberty/Bureau on the
16 movant side and the opposition is Time Warner and
17 Cablevision, so -- unless, obviously, the context indicates
18 otherwise.

19 I want to say up front, I just want to note the
20 objection that Time Warner has to the procedures that I have
21 outlined -- not that I have outlined, really -- that I have
22 prescribed. But I do not see any point in getting into that
23 this morning.

24 You have made it very clear, Mr. Beckner, exactly
25 what your feelings are about this. Obviously, from what I

1 have written, my latest order on this case, in working
2 through the record, I have got a problem. I have got a
3 problem with candor and credibility. And I have made it
4 very clear as to where those problems lie.

5 The context of the case, procedural context of the
6 case, right now is in summary decision -- a motion for
7 summary decision. And the procedures for the motion for
8 summary decision, Section 251, provide considerable
9 discretion for the presiding officer to design ways in which
10 the case can be resolved by way of summary decision. And I
11 believe this case is still in that context. If it was not,
12 I would have ordered the full hearing quite some time ago.

13 So, what I am trying to do is do it the best way
14 that I can. It is going to require me to take testimony. I
15 have reached that point now where I just have to take the
16 testimony. And now, all that we are here to do is to just
17 work out a schedule.

18 Unfortunately, it is that time of year when this
19 is not the best time to be making expedited hearing
20 schedules. But the dates that you all have given to me
21 indicate clearly to me that everybody is prepared to go
22 forward and get this thing done -- these hearings done.

23 So, let us move right on to what we are here for.
24 My first comment or the first item that I want to discuss
25 and rule on is the use of prepared written testimony versus

1 live, direct testimony.

2 Now, I know that, Mr. Beckner, in your report, you
3 are interested -- you want to see it come in as, let me say,
4 the traditional way here at the Commission, although that
5 really is not altogether true. It is traditional in the
6 broadcast cases and it is even specified in the rules that
7 it's all but necessary to use in broadcast cases, with some
8 limitations. And what that is, is the written testimony
9 comes in and then you all cross-examine, based on the
10 written testimony.

11 This is not that kind of a case. This is not a
12 broadcast case, for one thing. And, secondly, the burden of
13 proceeding, the burden of proof, has been assigned to
14 Liberty.

15 Now, the one item that I do have to address, I
16 feel required to address, however, is -- your absolutely
17 correct -- I had prescribed the written testimony in my
18 earlier order. This goes back to March. And that was based
19 upon a joint report that had been submitted to me, where the
20 parties had -- at least it was represented to me -- that the
21 parties had agreed on that procedure.

22 Obviously, that would not be focused on until I
23 had come out with my order of last week, but now it is back
24 in focus again and there seems to have been a change.

25 So, maybe I should ask Mr. Cutter or Mr. Begleiter

1 to address that. Or, Mr. Spitzer.

2 MR. SPITZER: Well, it is actually a very simple
3 reason, Your Honor. Our view is that since, as you say,
4 candor and credibility are the crux of what this hearing is
5 about, there is much to be gained for you, as the fact
6 finder and as the judge of credibility, in watching a
7 witness actually give his live testimony. The written
8 testimony that we could submit to you would be essentially
9 fleshing out of the deposition transcripts, as Mr. Beckner
10 rightly points out. The deposition transcripts all reflect
11 questioning by essentially hostile or, if not necessarily
12 hostile, adverse parties technically. So, they do not tell
13 a complete story.

14 And we just believe that the most effective way
15 for you to get a sense of a witness, to determine
16 credibility, is to watch that witness testify in person.
17 That is the traditional, time-honored system in this country
18 and we just think we will keep it very short, very focused.
19 It will be direct, to the point, but it will be the best
20 opportunity for you to make an evaluation of the witness.

21 JUDGE SIPPEL: Mr. Beckner? Mr. Holt?

22 MR. BECKNER: Well, Your Honor, I think
23 Mr. Spitzer would agree with me that the demeanor evidence
24 that the fact finder receives from hearing a live witness is
25 at a fairly low level when he or she is engaging in the

1 friendly direct with his lawyer. And only when the heat is
2 on in cross-examination is the witness's credibility really
3 brought to the fore. And in the procedure that we had
4 originally agreed to, and that I am suggesting we follow
5 here, preserves all of that.

6 It is simply is a way of shortcutting what can
7 otherwise be, perhaps, a somewhat tedious procedure of a
8 Q and A on the initial direct. Obviously, the cross is
9 live. The redirect that, no doubt, Bartoldi's counsel will
10 have will be live and so on. So, I think all of the
11 objectives that Mr. Spitzer mentions and the benefits of
12 having live testimony will, in fact, be preserved with
13 prefiled written direct, just as it is in the broadcast
14 hearing context. And, you know, we can get right down to
15 the challenges and inconsistencies.

16 JUDGE SIPPEL: Mr. Holt?

17 MR. HOLT: Yes, Your Honor, in addition -- I would
18 agree with Mr. Beckner's comments. But, in addition, I
19 would also point that, at this juncture, we have a number of
20 disparate statements that do not tie well together, that
21 have been developed through depositions. I think prefiled
22 written testimony would allow Your Honor to have a
23 comprehensive view of Liberty's explanation of trying to
24 cure some of these ambiguities and would allow you to come
25 into the hearing knowing what issues they are addressing and

1 allowing us to focus our cross-examination and spend less
2 time at the hearing itself.

3 I think that it makes a lot of sense for everybody
4 to have an understanding of their explanation in a
5 comprehensive, written way, before we come in and cross.

6 JUDGE SIPPPEL: Well, you know, I focused what my
7 concerns were. These issues of credibility are narrowed
8 down to one area, although, of course, the questions that
9 can be asked in that area are what this is all about. I
10 cannot have any way of knowing exactly how far that is going
11 to go.

12 But you certainly are on notice, in terms of what
13 the issues are that your witnesses are going to testify to.
14 I mean, my God, are you on notice. And you have had
15 depositions on depositions and summary decision motions,
16 where the positions have been laid out in about as much
17 detail as -- certainly, far more detailed than any written
18 testimony would show.

19 The problem with -- I am obviously leaning towards
20 what Liberty is proposing here, and my reasons are, first of
21 all, I am not convinced that -- I am certainly not convinced
22 that the direct testimony is going to be in conversational
23 form. The only way you can get a conversation going out of
24 direct testimony is if you get away with asking leading
25 questions, and I'll bet you that is not going to happen

1 here. I have just got that feeling that it is not going to
2 happen at all.

3 So, it is not going to be that we are going to sit
4 here and listen to this disengaged flow of conversation
5 between Liberty's attorneys and these four witnesses. So,
6 they are going to be put to the test, I think, to a far
7 greater extent, putting direct on live, as opposed to what
8 they call "canned" testimony. And I am not criticizing that
9 prewritten testimony. In the right cases, under the right
10 circumstances, it is definitely the best way to go. And I
11 am very generous about that, if both parties agree.

12 But I think here we are in a situation where, for
13 these reasons, we are going to go the way that Liberty wants
14 to go. Getting back, then, they have the burden of proof.
15 They have the burden of proceeding. They have got the
16 issues that are set against them. And, at least at this
17 stage of the proceeding, they have to convince me that their
18 party is presenting the situation with sufficient candor to
19 the Commission that I am willing to accept the story.

20 I am obviously not convinced yet. So, I think
21 that they have got a significant burden. In that context,
22 they have a significant burden. So, if they want to do it
23 that way and the rules provide for it, I am going to let
24 them do it that way.

25 And, as I say, I would not even require them to

1 give a summary of the witnesses' testimony because, I mean,
2 gosh, you have it. If they go beyond what they testify to,
3 and some of them in two depositions, or if they go beyond
4 what the representations have been in the motion for summary
5 decision, they are not helping their credibility problem.

6 So, I think they are basically locked in, I mean,
7 to the extent that I can make that kind of a
8 prognostication. I mean, obviously, I do not know what or
9 how they are going to testify in the sentence by sentence
10 give-and-take. And then, on top of that, you have got an
11 opportunity to cross-examine.

12 So, let us put that aside and move on to the next
13 issue, which is the public documents and the exhibits.

14 MR. HOLT: Your Honor, can I interject for one
15 moment? In the memorandum that Liberty had submitted, they
16 reserve the right to call rebuttal witnesses in response to
17 the presentation of evidence. I did not quite understand
18 what their concept was. They are going to have an
19 opportunity to redirect. It was my understanding that they
20 have an obligation to identify all witnesses that they
21 intend to present --

22 JUDGE SIPPEL: Yes.

23 MR. HOLT: -- in order to sustain their burden.
24 And unless we were to present rebuttal witnesses, in which
25 case we would open the door for surrebuttal, I am not

1 certain what they are reserving here and I would be a little
2 concerned that they may have something that they intend to
3 do that we are not going to provided with advance notice of.

4 JUDGE SIPPEL: All right. Well, I am going to let
5 Mr. Begleiter address that. We are going to talk about the
6 same things, but just a little bit different order. But
7 this is more appropriate. I think you are right. Let us
8 talk about the witnesses now, since we are talking about
9 testimony.

10 Mr. Begleiter?

11 MR. BEGLEITER: Well, we only reserve the right
12 for rebuttal witnesses, Your Honor, if they call witnesses.

13 JUDGE SIPPEL: Oh. Well, that is what I sort of
14 thought.

15 MR. HOLT: Okay. It was not clear from this.

16 JUDGE SIPPEL: What I had suggested in my memo
17 was, there has obviously been argument and disagreement with
18 my rulings with respect to Mr. Barr, the need for Mr. Barr's
19 testimony. And all that I was saying was that, if at this
20 stage of the proceeding, if Liberty felt that Mr. Barr was
21 necessary to add to their presentation of the candor
22 testimony, then this is the time to raise that. I do not
23 know. But that has not come up.

24 MR. BECKNER: Your Honor, speaking for
25 Time Warner, that is fine. I mean, I share Mr. Holt's

1 concern. Obviously, we are expecting to see four witnesses,
2 the four named people in your order, and we just want to
3 know if we are going to see any more. I mean, are we going
4 to see Mr. Constantine or Mr. Barr or whatever. And, as I
5 understand what Mr. Begleiter told us, the answer is, we are
6 not going to see any more, unless Time Warner/Cablevision
7 calls someone. I mean, have I got it right?

8 JUDGE SIPPEL: Yes, well --

9 MR. BEGLEITER: Yes.

10 JUDGE SIPPEL: -- yes. I mean, that was what was
11 given to me in writing, and I asked if there were any
12 changes. I mean, I am even that careful these days. I
13 asked if there is anything that has changed between
14 six o'clock last night and this morning.

15 Well, let me do it a little differently, then.
16 Let me give you the dates that I have sketched out here.
17 First of all, I am not going to require -- well, let me say
18 that the December 20 date is the date that I would require
19 the exchange of a list of the witnesses and a list of the
20 exhibits. Now, if there is going to be any question about
21 -- and then I would not require an exchange of the exhibits
22 themselves until the sixth of January. And I will get more
23 refined as I go along.

24 But looking for an admissions session of
25 January 13. And in between the exchange and the admissions

1 session would be efforts to work out any issues about public
2 documents. And then the live testimony would start on the
3 fourteenth, which is, I believe, a Tuesday. And then that
4 would -- I am talking about in January now. And then that
5 would give us four days to complete the testimony.

6 Now, in your status report, Mr. Beckner, you and
7 Mr. Holt indicated -- I got the feeling -- maybe I should
8 not say it this way, but are you anticipating witnesses?

9 MR. BECKNER: Well, to be honest with you, I do
10 not know whether we are going to be permitted to call
11 witnesses. I mean, I am not sure, from your order, whether
12 we have that option. But whether we do or we don't, it
13 seems to me -- and Mr. Holt and I discussed this between
14 ourselves in advance -- we thought, frankly, that -- and
15 this is especially true in the absence of prefiled written
16 direct -- that if we want to call a witness, we could make
17 the most effective justification for that following the
18 direct testimony of the Liberty witnesses.

19 Now, if you want, we can specify earlier who we
20 want to call, based on what we think these folks are going
21 to say from their deposition testimony and so on. I do not
22 have any problem with doing that.

23 But when Chris and I talked about this, he brought
24 up the point -- and if he will forgive me for speaking for
25 him -- which I thought was a good one. Which is that it is

1 harder to discuss in the abstract, the need for a witness or
2 particular evidence, than it is when you can point to things
3 that another witness said that you think will be
4 contradicted by the witness you want to bring in. In kind
5 of the same way that we have had these discussions with you
6 about our desire to have additional discovery for certain
7 witnesses, which you have allowed us to have.

8 But I do not have a strong feeling one way or the
9 other as to when we would like to tell you and the Bureau
10 and Bartoldi when we want to have more witnesses. And we
11 just thought that a better time might be later rather than
12 earlier. But if you --

13 JUDGE SIPPEL: Well, all right. Mr. Holt, is that
14 what your position is? Well, let me try to understand what
15 you are saying.

16 MR. HOLT: Yes, I think that the concept is that
17 it would be difficult to say in advance whether or not there
18 has been contradictory testimony provided by someone other
19 than the four witnesses, until those witnesses actually get
20 up on the stand and speak. And once you have heard them
21 provide their story and have conducted cross-examination, I
22 guess my thought is that we may want to call witnesses who
23 have provided testimony during discovery that contradicts
24 what we may have heard during live examination.

25 JUDGE SIPPEL: Well, there is a procedure, and it

1 is rarely used and rarely granted, but, I mean, you can
2 always move to either reopen the record or to expand the
3 proceedings because -- I mean, look, I am here to determine
4 credibility issues. If you have a live witness -- if you
5 have witnesses that have not only relevant evidence but have
6 peculiar circumstances to show good reliability and it
7 relates -- you know, it is square on with the issues and,
8 you know, we know what we are talking about here -- you
9 know, when the dates of the knowledge were of the
10 activations and all -- this is the time to let us know.

11 If you are going to use -- I do not -- well, I
12 cannot say it any other way. The procedures are there. If
13 you have a reason to bring in additional witnesses after the
14 testimony or to reopen the record, you can file a motion,
15 and they will oppose it and I will rule on it. That is all
16 I can say. I am certainly not inviting it.

17 I mean, I think by now you have got -- well, I
18 have said it before. I mean, the record is very well
19 established. This argument or this type of speculative
20 witnesses was appropriate for discussion before July of this
21 year. But since July, I mean, we have gotten the issues
22 very much refined, the fact issues.

23 So, I just do not see it working that way. What I
24 probably really want to do on December 20 is lock in the
25 exhibits more than locking in the witnesses, because I think

1 the witnesses are already locked in, particularly after what
2 I am hearing here this morning. If, by the 20th, you know,
3 if you all come up with -- based on what you are
4 representing here today, I do not think you are going to
5 have anything to add to that on the 20th.

6 What about exhibits? Do you have exhibits? Does
7 the Time Warner side or Cablevision, do you have exhibits
8 that are not -- well, will you be introducing exhibits in
9 the course of the hearing?

10 MR. BECKNER: Well, I mean, the exhibits that -- I
11 presume that Bartoldi is going to use some exhibits. And if
12 they do not use them, we are going to use them. I mean, at
13 the top of the list, of course, is the Lehmkuhl memorandum
14 --

15 JUDGE SIPPEL: Right.

16 MR. BECKNER: -- of the 28th.

17 JUDGE SIPPEL: Right.

18 MR. BECKNER: I mean, just as an obvious example.
19 I think, originally, in our procedure, what we had suggested
20 is, is that there would be a designation of exhibits by
21 Bartoldi first, and then by our side second. If we did it
22 simultaneously, we are going to end up designating a lot of
23 the same exhibits. I mean, I do not have a strong feeling
24 one way or the other as to whether or not there are any
25 exhibits that we might want to use that Bartoldi is not

1 already planning to use. I do not really care if.

2 If you prefer that we make our designations at the
3 same time, we are still going to have to sit down and figure
4 out where the overlaps are between the exhibits they
5 designate and the ones we designate, or we can do it
6 sequentially. And it is the same to me.

7 MR. SPITZER: And in answer to that, Your Honor,
8 maybe for us just to talk to each other before the 20th.

9 JUDGE SIPPEL: I would assume it.

10 MR. BECKNER: Well, we can do that, too.

11 JUDGE SIPPEL: I would assume it.

12 MR. SPITZER: Which, sometimes, we succeed in
13 doing.

14 JUDGE SIPPEL: Well, you do. And I expect that
15 that is what would happen.

16 MR. SPITZER: Right.

17 JUDGE SIPPEL: And I expect that I would get a
18 list.

19 MR. SPITZER: Right.

20 JUDGE SIPPEL: And as long as that is on file,
21 then both sides are locked in as to what they are going to
22 have to do to prepare for the hearing.

23 And I understand there is a lot of mechanical work
24 that is going to have to be done up until the sixth, when
25 you are exchanging the exhibits. And now, the exhibits that

1 would be exchanged, I assume, are going to be 99 percent
2 coming from what is with the summary decision record. Is
3 that correct?

4 MR. SPITZER: That is our view, Your Honor.

5 JUDGE SIPPEL: Okay. Then, there might be some
6 more, but we do not know yet.

7 MR. SPITZER: Right. Can I raise a slightly
8 separate issue with respect to scheduling?

9 Bob Begleiter, his wife is due to give birth about
10 the 25th of January.

11 JUDGE SIPPEL: Oh, wow.

12 MR. SPITZER: And so, if there is any way that we
13 could just move this back from the 13th and 14th to begin
14 maybe the eighth, ninth, tenth, I think that would give a
15 bit more comfort in the Begleiter household.

16 JUDGE SIPPEL: Let me see what --

17 MR. SPITZER: We have slated the sixth for the
18 exchange of exhibits and then the 13th for admission, the
19 14th for testimony. I do not know if it would be possible
20 to have an exchange on the sixth and, maybe, an admission
21 session on the eighth, and then testimony on the ninth and
22 tenth, to continue, if necessary thereafter.

23 JUDGE SIPPEL: Well, I will make any -- I mean, I
24 had not gotten to it yet. I am trying to go from the
25 general into the specific.

1 MR. SPITZER: Okay.

2 JUDGE SIPPEL: But I had a briefing schedule.

3 What I have got on my notes here -- I mean, you do not know
4 about this yet -- but I wanted a bench memo on the ninth on
5 the status of, you know, working out what is going to go on
6 the public record and what is not going to go on the public
7 record and where the parties differ from and, hopefully,
8 where this can be weaned down to where there is going to be
9 just a handful or lesser than all of the documents. So,
10 there is going to be a contest with respect to putting on
11 the public record.

12 And then, on the tenth, I wanted a bench memo on
13 the privilege positions, on the attorney/client privilege
14 positions, that have been asserted in the Lehmkuhl
15 depositions so that I can see exactly, from the legal
16 standpoint -- that is, the points of law -- where the
17 parties stand with respect to whether or not Lehmkuhl can
18 answer questions that were asked of him at the deposition.
19 And I am going to be inclined -- I am going to have to rule
20 as to whether or not he is -- but I believe he is required
21 to. In any event, I think you understand where I am getting
22 at.

23 So, I am looking for this time frame between and
24 before we actually put witnesses on the stand, where I will
25 have the benefit of all of these efforts. And that way, I

1 am hopeful, will take less time from the witnesses. I do
2 not think they want to listen to lawyers argue about
3 privilege and things like that. Or judges getting into
4 that. But, I mean, I know it is going to happen, but I am
5 trying to limit it as much as I can.

6 I can do this. I mean, we can work these dates
7 out at a later time if you, Mr. Begleiter, wants to. I do
8 not know. I mean, this is a very difficult one for me to
9 call, because I do not have any idea what is happening when,
10 except as -- well, maybe you do not either.

11 I mean, I can work on -- if you want to wait a
12 couple of days and come back with some better dates. As
13 long as we are getting it done within this time frame, I can
14 adjust.

15 MR. BEGLEITER: Your Honor, what I might suggest
16 is, if we could have the admissions session on the tenth, on
17 the Friday, and then just start on the 13th and 14th. And,
18 hopefully, nothing will have happened that weekend or those
19 days.

20 JUDGE SIPPEL: Well, that is fine. I mean, that
21 is fine with me. So, an admissions session on Friday?

22 MR. BEGLEITER: Right.

23 MR. HOLT: Then we would start the following
24 Monday?

25 MR. BEGLEITER: Yes.

1 JUDGE SIPPEL: So, we can have all of the cleanup
2 work done in that first week. I mean, the week between the
3 sixth and the tenth.

4 MR. BEGLEITER: Yes.

5 JUDGE SIPPEL: We can have all of that -- let me
6 just generally refer to it as the cleanup work. And then we
7 would start the live testimony on the 13th. Sure. I mean,
8 I can just move back these dates for bench memos and things.
9 I mean, these do not have to be elaborate memos. Just,
10 really, points and some authorities cited as to why you feel
11 that it should be done that way.

12 When I say "points", I am talking about, you know,
13 this is public -- this is clearly a confidential document
14 because of "zip". Or the lawyer/client privilege is -- you
15 know, characterize what the exchange is and give your best
16 case or two case cites. And so, you know, that is all.
17 That's all it needs to be.

18 All right, then, that would start the live
19 testimony on the 13th. Proposed findings would be two weeks
20 after the receipt of the transcripts. And that is usually
21 10 days. So, two weeks to write proposed findings.

22 And I was going to say, what is the position of
23 the parties with respect to reply briefs?

24 MR. BECKNER: Well --

25 JUDGE SIPPEL: Yes, sir?

1 MR. BECKNER: We had asked for the opportunity to
2 file -- I think we called them reply comments -- but replies
3 to the proposed findings that are submitted by Bartoldi and
4 the Bureau. And, obviously, if we have a right to reply,
5 then they certainly should as well.

6 JUDGE SIPPEL: Well, yes, they did not ask for one
7 and you did. That is how I read the reports, anyway.

8 Did you want to reply, Mr. Spitzer?

9 MR. SPITZER: We do not view it as essential. We
10 have no opposition to it. I would think that it should not
11 take much more than one week subsequent to the initial
12 submission of proposed findings.

13 JUDGE SIPPEL: Sure. All right. Well, we will do
14 that. We will go with Mr. Beckner's schedule on that. Two
15 weeks after the transcripts come in, proposed findings are
16 filed. And then, a week after that -- or, three weeks after
17 the transcript comes in, whichever way you want to look at
18 it -- the reply findings come in. And I think that would do
19 it.

20 I want to get back on these public documents,
21 though. As I understand it right now, the exhibits that
22 were filed with the motions for summary decision are all in
23 a confidential status. Is that right?

24 MR. BECKNER: They were refiled all in one. I am
25 sorry, I take that back.

1 JUDGE SIPPEL: Yes, I know what was refiled.

2 MR. BECKNER: First part.

3 JUDGE SIPPEL: Yes. Am I correct that all of the
4 exhibits that are with the summary decision, the motion
5 papers, are all in a confidential status at the commission?

6 MR. SPITZER: I think they are.

7 MR. BECKNER: I mean, yours and ours.

8 JUDGE SIPPEL: Yes, they are.

9 MR. BECKNER: Yes, they are.

10 JUDGE SIPPEL: That is by virtue of this agreement
11 and the order.

12 MR. BECKNER: Yes.

13 JUDGE SIPPEL: Okay. Well, let me tell you where
14 I am coming out on this. I am obviously, as I am going
15 through the record and getting my thoughts down on paper, I
16 am virtually convinced that by the time I get through
17 writing, whichever way I come out on this thing, that these
18 exhibits are going to have to go on the public record to
19 explain why I wrote the way I wrote. And that leads me more
20 into this hearing aspect of it is a very important aspect of
21 the case.

22 The hearing is going to be in public. I mean, I
23 am not going to limit access to the public to the hearing.
24 So, you know, why do we have to spend much time with whether
25 or not we are going to protect these documents? I mean, as